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REPUBLIC OF KENYA

**MACHAKOS COUNTY GAZETTE  
SUPPLEMENT**

**ACTS, 2014**

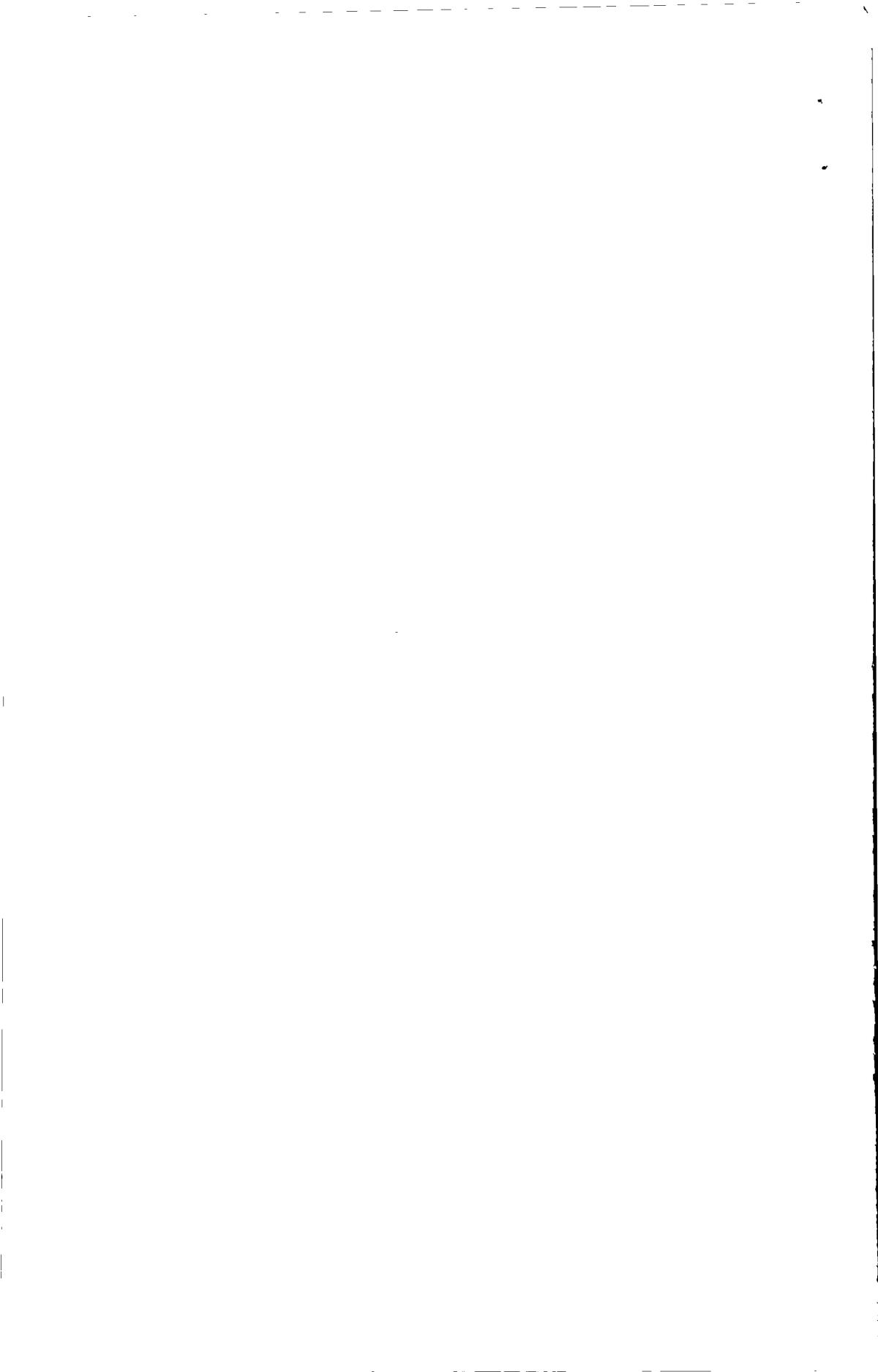
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**NAIROBI, 29th December, 2014**  
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**THE MACHAKOS COUNTY AGRICULTURAL  
DEVELOPMENT FUND ACT, 2014**

**AN ACT of the County Assembly of Machakos to provide for the growth and development of the agricultural sector, enhance production and value addition, and marketing of agricultural products; to establish the County Agricultural Development Fund and for connected purposes.**

**ENACTED** by the County Assembly of Machakos as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Machakos County Agricultural Development Fund Act, 2014. Short title
2. In this Act, unless the context otherwise requires— Interpretation

“agriculture” includes—

  - (a) fruit, vegetable, flower and seed farming;
  - (b) dairy farming, bee keeping, breeding and keeping of livestock;
  - (c) conservation and keeping of game animals, game birds, and aquatic animals;
  - (d) game ranching and game cropping;
  - (e) the use of the land for grazing, market gardening, or for nursery grounds;
  - (f) agro-forestry;
  - (g) use of land for the production, transformation and trade of crop and livestock products; or
  - (h) such other use of land for purposes of food and animal production.

“agricultural land” means land that is used for agricultural purposes, and includes any land which by any written law is zoned, registered or otherwise designated as agricultural land;

“Board” means the Machakos County Agricultural

Development Fund Board established under section 7;

“County Executive Committee Member” means the Member of the Executive Committee responsible for matters relating to agriculture;

“crop” means any plant that is grown in significant quantities to be harvested as food, as livestock fodder, fuel, or for any other economic purpose

“eligible borrower” means an individual or enterprise in agricultural sector to which credit facility may be provided by the Fund or an lending institution and includes—

- (a) micro, small or medium enterprise; and
- (b) cooperative society;

“Fund” means the Machakos County Agricultural Development Fund established under section 4;

“financial year” means a period of twelve consecutive months from 1st July to 30th June.

3. (1) The object and purpose of this Act is to provide a legal framework to facilitate the growth and development of agriculture in the County and in particular to—

Object and purpose of the Act.

- (a) establish the County Agricultural Development Fund to finance agricultural development initiatives;
- (b) promote the production, processing, marketing, and distribution of agricultural products;
- (c) reduce duplication and overlap of functions among institutions involved in the regulation of agriculture;
- (d) promote competitiveness in the agricultural sector and to develop diversified crop and animal products and market outlets; and
- (e) attract and promote private investment in agriculture.

## **PART II—ESTABLISHMENT AND ADMINISTRATION OF THE MACHAKOS COUNTY AGRICULTURAL DEVELOPMENT FUND**

4. (1) There is established a Fund to be known as the

Establishment of the Fund.

## Machakos County Agricultural Development Fund.

(2) The Fund shall consist of—

- (a) funds appropriated by County Assembly for purposes for which the Fund is established.
- (b) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in the Fund in the course of exercise of its functions assigned under this Act;
- (c) gifts, donations, grants and endowments made to the Fund from any lawful source;
- (d) income from any investment made by the Fund and monies from any other lawful source approved by the Trustees.

(2) There shall be paid out of the Fund any expenditure approved by the Board pursuant to this Act.

(3) The Fund shall be managed by a Board established under section 7.

5. The objective of the Fund is to support growth and development in agriculture and enhance productivity in the agricultural sector by—

Objective of the Fund.

- (a) providing funding for eligible projects in the agricultural sector;
- (b) facilitating the provision of farm inputs to farmers including fertilizers, seeds, agro-chemicals, animal breeding, animal drugs and feeds, artificial insemination services and fishing equipment and supplies;
- (c) facilitating market research, dissemination of market information and strengthening producer organizations;
- (d) funding irrigation infrastructure including community boreholes, dams, shallow wells and water pans;
- (e) facilitating the development of appropriate storage, bulking and processing facilities in

strategic areas with potential for increased agricultural production;

- (f) promote development of value-addition infrastructural facilities including provision of electricity and water in rural areas;
- (g) promote investment climate and efficiency of agribusiness and to promote the development of agricultural products for export.

6. The Fund shall be used to support eligible projects aimed at—

Application of the Fund.

- (a) increasing productivity of crops grown within the county;
- (b) plant and animal disease control;
- (c) creation and expansion of agricultural products markets;
- (d) promotion of agriculture related cooperative societies within the county;
- (e) soil and water conservation;
- (f) promoting crop diversification within the county; and
- (g) supporting other agricultural development initiatives.

7. (1) There is established the Machakos County Agricultural Development Fund Board which shall be a body corporate with perpetual succession and a common seal.

Establishment of Board of the Fund

(2) The Board shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract;
- (d) borrowing and lending money; and
- (e) performing such other acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

8. (1) The Board shall comprise—
- (a) the County Chief Officer in the department for the time being responsible for agriculture;
  - (b) the County Chief Officer in the department for the time being responsible for finance;
  - (c) the Head of legal services in the county; and
  - (d) three persons not being public officers, appointed by the Member of the Executive Committee as follows—
    - (i) one person being a woman farmer;
    - (ii) one person being a man farmer; and
    - (iii) one person representing special interests in the county.
  - (e) the Chief Executive Officer appointed under section 14 who shall also be the Secretary of the Board; and

Composition of  
the Board

(2) The persons appointed under subsection (1) (d) shall hold office for a term of five years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1) (d) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

(4) A member of the Board may be removed from office by the County Executive Committee Member.

9. (1) The functions of the Board shall be to—
- (a) provide strategic guidance and oversight of the Fund;
  - (b) implement the policies of the County

Functions of the  
Board.

Government on agricultural sector funding;

- (c) ensure that all projects funded under the Fund are consistent with the counties priorities specified in the relevant policy documents on County agricultural development and financing;
  - (d) authorise allocations from the Fund ;
  - (e) formulate and approve standards, guidelines and procedures for funding under this Act,
  - (f) perform any other function as may be conferred on it by this Act or any other law.
- (2) Without prejudice to subsection (1), the Board—
- (a) shall receive and consider applications for funding from eligible applicants and determine eligible projects;
  - (b) may establish linkages with financial and other institutions for purposes of providing credit guarantee for loans issued to eligible borrowers by such institutions;
  - (c) may conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
  - (d) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
  - (e) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of agricultural products by means of inter-trading or intra-trading among the established wholesale markets;
  - (f) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation,

conservation and transportation of crops to ensure health and proper trading;

- (g) ensure secure domestic food supply for the County;
- (h) formulate policies and guidelines on dealing with other crops;
- (i) promote and advise on strategies for value addition prior to the export of agricultural products from the county;
- (j) recommend general industry agreements between farmers and processors of scheduled crops;
- (k) sensitize and build capacity among farmers;
- (l) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and
- (m) perform any other relevant function.

**10.** (1) The County Executive Committee Member shall, on the advice of the Board, establish institutional linkages to coordinate the provision of credit, farm inputs and market assistance.

Incentives to farmers.

(2) The Board may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers agricultural products—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical

infrastructure development, financial and market information;

- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local fertilizer blending and initiating establishment of national or county fertilizer manufacturing plants;
- (g) pest and disease control; and
- (h) post harvest facilities and technologies including storage, processing, distribution and transport facilities.

11. (1) In the discharge of its functions, the Board shall have all powers necessary or incidental to achievement of the objects and purpose of this Act.

Powers of the Board.

(2) Without limiting the generality of subsection (1), the Board of Trustee shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
- (b) employ such persons as may from time to time be necessary for discharging its functions, with the approval of the Member of the Executive Committee and the County Public Service Board;
- (c) enter into partnerships with financial and other institutions; and
- (d) establish Committees for the better carrying out of its functions under this Act as it may deem fit.

(2) The Board may establish offices in every Sub-County in the County.

12. (1) The Board may establish such sub-committees and delegate such functions as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

Delegation by the Board

(2) The Board may co-opt into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the Sub-Committee.

(3) The Board may, by resolution either generally or in any particular case, delegate to any officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

13. (1) The Board may regulate its own procedure in the conduct of its business and affairs.

Conduct business and affairs of the Board.

14. (1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the County Public Service Board, on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive Officer.

(2) Despite subsection (1), the appointment of the Chief Executive Officer shall be through a competitive recruitment process.

(3) A person is qualified for appointment as the Chief Executive Officer if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in—
  - (i) senior management; or
  - (ii) a profession directly relevant to the functions of the Board;
- (d) has experience in finance; and
- (e) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(4) The Chief Executive Officer shall, subject to the direction of the Board, be responsible for the—

- (a) implementation of the decisions of the Board;
- (b) day to day management of the affairs of the Fund;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the

Board.

(5) The Chief Executive Officer shall hold office for a term of three years and is eligible for re-appointment for one further term.

(6) The Chief Executive Officer may be removed from office on the recommendation of the Board.

**PART III—MISCELLANEOUS**

15. All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be kept for the purposes for which the Fund is established.

Funds to be retained in the Fund.

16. (1) Subject to this Act, the Board shall give priority to community-based projects to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants.

Community-based projects to be give priority

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

17. (1) All project proposals that seek to benefit from the Fund shall be submitted by a potential beneficiary to the Chief Executive Officer in such form and detail as may be prescribed under the regulations.

Submission of proposals.

(2) The types of projects submitted for funding under this Act shall comply with the provisions of this Act and in particular, meet the objectives stipulated in Section 4 of this Act.

18. (1) Agricultural officers at the Sub-County, Ward and Village level shall ensure the implementation of all projects funded under this Act as shall be prescribed.

Project implementation.

(2) Where a project covers several sectors, the Chief Executive Officer may order the formation of an inter-departmental team at the Sub-County, Ward or village level to coordinate the optimal and efficient implementation of the project as may be prescribed.

(3) The Chief Executive Officer shall monitor the

implementation of projects under this Act to ensure compliance with the provisions of this Act.

**19.** (1) All payments for projects to be funded under this Act shall be made through cheques subject to the relevant government rules and regulations relating to public finance.

Project payments and ownership of property.

(2) All fixed and movable assets, including equipment bought under this Act shall be the property of the Fund.

(3) No asset or equipment acquired under this section shall be disposed of without the prior approval of the Board.

(4) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (3) shall be credited to the account of the Fund.

**20.** (1) The Board shall, not later than six months after the end of each financial year, prepare an annual report in respect of that financial year, containing—

Annual Report

- (a) the audited financial statements;
- (b) the report on the operations of the Fund; and
- (c) any other relevant information.

(2) The annual Report shall be presented to the Member of the Executive Committee who shall table it before the County Assembly within three months after receiving the Report.

**21.** The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2012.

Audit

**22.** Board shall pay the Chief Executive Officer and staff of the Fund such salaries and allowances as shall be determined by the County Public Service Board.

Salaries and allowances.

**23.** (1) The County Executive Committee Member shall in consultation with the Board make regulations generally for the better carrying out the provisions of this Act.

Power to make regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) guidelines for operating the Fund;
- (b) maximum credit facility to be issued or

guaranteed under the Fund;

- (c) criteria for categorization of micro, small and medium enterprises for purposes of this Act;
- (d) extent of the liability of the Fund to a lender in circumstances where the lender fails to comply with this Act;
- (e) variation of the terms and conditions of an agreement where a borrower fails or refuses to comply with this Act;
- (f) credit insurance and reinsurance;
- (g) manner of giving of information to the Fund for the purposes of the making of an agreement;
- (h) audit and examination of accounts of qualifying borrowers;
- (i) circumstances under which a given class of loans may be written off and the remedies to the lenders thereof; and
- (j) such other matters as the Fund considers necessary.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under the Statutory Instruments Act.

**24.** (1) A person who—

Offences.

- (a) wilfully applies the proceeds of a loan to any purpose other than the purpose for which the loan was approved; or
- (b) having obtained a loan, wilfully destroys or misappropriates any security given in relation to the guaranteed loan;
- (c) knowingly gives false information; or
- (d) destroys any asset used as a collateral by a

financial intermediary, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer shall be held liable.

(3) Despite subsection (2), it is a defence if a person proves that the offence was committed without their consent or involvement and that they exercised due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.

